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IN RE: REALPAGE, INC., RENTAL)	Case No. 3:23-md-3071
SOFTWARE ANTITRUST LITIGATION)	MDL No. 3071
(NO. II))	
)	Chief Judge Waverly D.
)	Crenshaw, Jr.
)	
)	JURY DEMAND
)	

JOINT NOTICE OF FILING CONCERNING STATUS OF MEMBER CASES AND PLEADINGS

- Substitution of Certain Entities

Plaintiffs and the relevant counsel have conferred and have agreed as follows:

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Inc.” as a defendant and substitute “The Related Companies, L.P.” and “Related Management Company L.P.” in its place.¹

- B. Greystar Entities: By agreement, Plaintiffs will file a Renewed Unopposed Motion to Substitute in all cases that, if granted, would terminate “Greystar Real Estate Partners, LLC” and “Greystar Management Services, LP” as a defendant and substitute “Greystar Management Services, LLC” in its place.²
- C. Pinnacle/Cushman: By agreement, Plaintiffs will file an Unopposed Motion to Substitute in certain matters that, if granted, would terminate Cushman & Wakefield, Inc. as a defendant and substitute Pinnacle Property Management Services, LLC in its place.³ Plaintiffs will also file notices of voluntary dismissal as to Pinnacle Property Management Services, LLC and Cushman & Wakefield, Inc. in 3:23-cv-00329.

Plaintiffs will also meet and confer with counsel for Defendant Morgan Properties Management Company, LLC regarding a substitution motion that, if granted, would terminate Morgan Properties, LLC, and Morgan Properties L.P. in the Member Cases where they are named, and substitute Morgan Properties Management Company, LLC in their place. Plaintiffs also continue to meet and confer with counsel for Cortland Management, LLC and Cortland Partners, LLC regarding a potential substitution motion.

- Dismissed Cases

The following cases have been dismissed in their entirety:

¹ See Dkt. 392 (relating to 3:23-cv-00412 and 3:23-cv-00413).

² That motion will relate to 3:22-cv-01082; 3:23-cv-00326; 3:23-cv-00329; 3:23-cv-00330; 3:23-cv-00331; 3:23-cv-00332; 3:23-cv-00333; 3:23-cv-00334; 3:23-cv-00335; 3:23-cv-00336; 3:23-cv-00337; 3:23-cv-00338; 3:23-cv-00339; 3:23-cv-00344; 3:23-cv-00345; 3:23-cv-00356; 3:23-cv-00357; 3:23-cv-00358; 3:23-cv-00377; 3:23-cv-00378; 3:23-cv-00379; 3:23-cv-00380; 3:23-cv-00381; 3:23-cv-00387; 3:23-cv-00388; 3:23-cv-00389; 3:23-cv-00390; 3:23-cv-00391; 3:23-cv-00410; 3:23-cv-00411; 3:23-cv-00412; 3:23-cv-00413; 3:23-cv-00414; 3:23-cv-00415; 3:23-cv-00416; 3:23-cv-00419; 3:23-cv-00440; 3:23-cv-00445; 3:23-cv-00552.

³ That motion will relate to 3:23-cv-00330; 3:23-cv-00333; 3:23-cv-00335; 3:23-cv-00337; 3:23-cv-00357; 3:23-cv-00387; 3:23-cv-00413; 3:23-cv-00411; 3:23-cv-00410; 3:23-cv-00356; 3:23-cv-00389; 3:23-cv-00412; 3:22-cv-01082; 3:23-cv-00358; 3:23-cv-00377; 3:23-cv-00390; 3:23-cv-00380; 3:23-cv-00391; 3:23-cv-00416; 3:23-cv-00415; 3:23-cv-00414; 3:23-cv-00339; 3:23-cv-00326; 3:23-cv-00440; 3:23-cv-00445.

Kempton v. RealPage, Inc. 3:23-cv-00419

Bohn v. RealPage, 3:23-cv-00336

- Plaintiffs Not Named in the FACCAC

There are now 39 cases in this MDL. From those cases, eight plaintiffs are named in the FACCAC (Dkt. 314). Plaintiffs selected these eight as representative plaintiffs. As noted below, Plaintiffs also intend to add Plaintiff Kabisch as a representative plaintiff.

Moreover, should it suit the Court, Plaintiffs are willing to treat the FACCAC as an operative, rather than administrative complaint, and then, subject to addressing the issues raised in Defendants' position below, Plaintiffs can voluntarily dismiss without prejudice the underlying cases other than those brought by the current eight representative plaintiffs and Kabisch. Plaintiffs believe that dismissing the Member Cases other than those naming the current eight representative plaintiffs and plaintiff Kabisch without prejudice would simplify the docket, further the interests of efficiency and judicial economy, and remove Defendants' concerns regarding the status of Plaintiffs not named in the FACCAC. Dkt. 341, 3 n. 2.

Plaintiffs sent their position on these issues to Defendants today, and given other deadlines Defendants were facing today, Plaintiffs did not receive Defendants' position until the end of the day today. Consequently, Plaintiffs have not had an opportunity to consider or discuss Defendants' position with Defendants. However, pending their meet and confer with Defendants in advance of the August 7, 2023 conference, Plaintiffs note that: a) footnote two of Defendants' Motion to Dismiss [Dkt. 341] did not raise any argument regarding the dismissal of Plaintiffs' FACCAC, the subject matter of the motion, and as such, did not engage the principles addressed in *Thomas v.*

Tenn. Dep't of Human Servs., 3:21-cv-00426, at *9 (M.D. Tenn. June 23, 2022)⁴; b) Plaintiffs will discuss with Defendants moving the Court to dismiss, without prejudice, the underlying claims at issue should the FACCAC be treated as an operative, as opposed to administrative, complaint; and c) Plaintiffs do not accept Defendants' assertions about: i) this Court's personal jurisdiction over certain Defendants; or ii) Plaintiffs' Kabisch's contract with Greystar, both of which are not appropriately addressed via this joint notice.

Defendants' position on this proposal:

In Footnote two of their Motion to Dismiss [Dkt. 341], Defendants identified a procedural defect that several previously named Plaintiffs were not named in the MDL (the "Unnamed Plaintiffs"), but that (i) the Unnamed Plaintiffs have continued to participate in the MDL and (ii) these Unnamed Plaintiffs were the only Plaintiffs to have sued several Defendants. Defendants argued that Plaintiffs must name these Unnamed Plaintiffs in the MDL and be subject to motions to compel arbitration and discovery or the Court should dismiss the claims brought by the Unnamed Plaintiffs. However, Plaintiffs failed to address Footnote 2 in their Opposition [ECF No. 388], and as such Plaintiffs waived any potential arguments in response. *See Thomas v. Tenn. Dep't of Human Servs.*, 3:21-cv-00426, at *9 (M.D. Tenn. June 23, 2022) ("[W]here a party fails to respond to an argument in a motion to dismiss, the Court assumes he concedes this point and abandons the claim.") (internal quotations and citations omitted).

Plaintiffs now assert if they add Kabisch as a Plaintiff in the MDL in a future amendment and dismiss the "Member Cases" other than those naming the representative Plaintiffs, they cure many of the procedural issues that arose as a result of the Unnamed Plaintiffs. On the contrary,

⁴ In fact, Defendants stated in that footnote that their argument need not even be considered until after the Court's disposition of Defendants' motions to dismiss, requesting only that Plaintiffs later "clarify the status" of the other plaintiffs if their motion was "not granted with prejudice."

adding Kabisch creates a host of other issues. For starters, at least twelve Defendants in the MDL (i.e., Allied Orion Group LLC, B/T Washington, LLC dba Blanton Turner, ConAm Management Corporation, Dayrise Residential LLC, Equity Residential, Essex Property Trust, Inc., Kairoi Management, Lantower Luxury Living LLC, The Related Companies, L.P, Rose Associates, Sherman Associates, Inc., and Windsor Property Management Company) are not subject to personal jurisdiction in Tennessee. Second, if Plaintiffs voluntarily dismiss the “Member Cases” other than those naming the representative Plaintiffs, this will be the second voluntary dismissal for seven Plaintiffs who previously dismissed and refiled claims, which the Federal Rules dictate must be treated as an adjudication on the merits of those Plaintiffs’ claims. *See* Fed. R. Civ. P. 41(a)(1)(B). Third, Kabisch himself will likely be unable to pursue the asserted claims because his lease for his unit in Nashville, managed by Greystar Management Services, includes class action and jury waivers. And in any event, Kabisch has not yet been named in the MDL, so the procedural problems arising from the Unnamed Plaintiffs still remain.

As such, while Defendants are willing to discuss this matter with Plaintiffs, which they only raised this morning, Plaintiffs proposed “fixes” are far from a panacea.

The parties agree that this is an issue that the parties should address with the Court at the August 7, 2023 conference.

- Defendants Not Named in the FACCAC

Plaintiffs did not name in their FACCAC the following Defendants named in various Transferor Cases: AvalonBay Communities, Inc.; New England Realty Associates, L.P.; Peabody Properties, Inc.; The Irvine Company, LLC; Cortland Partners, LLC; Cushman & Wakefield, Inc.; Essex Management Corp.; Greystar Real Estate Partners, LLC; Morgan Group, Inc.; Morgan

Properties, LLC; Morgan Properties L.P.; Northland Investment Corp.; NALS Apartment Homes; Monarch Investment & Management Group; Landmark Realty; The Michaels Organization, LLC; D.P. Preiss Co., Inc.; Interstate Realty Management Co.; Asset Living, LLC; Sterling Apartment Homes; Park Town Apartment Homes; Park Town Place Apartment Homes; Kaled Management Corp.; and SHP Management Corporation.⁵

Plaintiffs will shortly file notices of voluntary dismissals for each of these Defendants that have not already been formally dismissed from the Underlying Cases and/or are not subject to pending or forthcoming substitution motions addressed above.

- Further Amendments

Plaintiffs anticipate filing a further amended pleading following the August 7 hearing and the Court's adjudication of the pending motions to dismiss Plaintiffs FACCAC. The amendments would include adding Plaintiff Kabisch to the operative Complaint. *See Kabisch v. RealPage, Inc., et al.* Case No. 3:23-cv-742 (“*Kabisch*”); Dkt. 389. The amendments would also add Crow Holdings, LP, and Trammel Crow Residential Company (“Crow Defendants”) as Defendants, who are named in *Kabisch* and who Plaintiffs had previously intended to name. Plaintiffs named Trammel Crow Company, LLC in the FACCAC. However, through discussions with its counsel, Plaintiffs now understand that Trammel Crow Company, LLC is unrelated to the Crow Defendants.

⁴ Before filing their FACCAC, Plaintiffs filed notice of voluntary dismissals in relation to the following: TF Cornerstone, Inc. (Dkt. 55), Irvine Company, LLC (Dkt. 224), SHP Management Corp. and Peabody Properties, Inc. (Dkt. 263-266), The Michaels Organization and Interstate Realty Management Company (Dkt. 303), and AvalonBay Communities, Inc. (Dkt. 309). Plaintiff White also previously dismissed New England Realty Associates LP from her claim (3:23-cv-00413, Dkt. 40).

Plaintiffs reserve the right to amend certain allegations to address issues raised, if any, in the Court's motion to dismiss decision(s).

- Student Complaint

After Defendants raised jurisdictional concerns, Plaintiffs filed a Notice of Dismissal of the Student Plaintiffs' Complaint. Dkt. 308. In that Notice, Plaintiffs indicated that they would file new Transferor Cases on behalf of the Plaintiffs named in the Student Housing Consolidated Complaint, and would seek to file an Amended Student Housing Consolidated Complaint after those newly filed Transferor Cases were transferred and became Member Cases in this MDL. Student Plaintiffs accordingly filed *Lauder, et al. v. RealPage, Inc., et al.*, Case No. 6:23-cv-01025 (D. Or.) on July 13, 2023, and *Dempsey, et al. v. RealPage Inc., et al.* Case Number 1:23-cv-01832 (D. Col.) on July 19, 2023. *Lauder* was tagged and transferred to this Court on July 26, 2023 (3:23-cv-757). A conditional transfer order for *Dempsey* was issued on July 25, 2023. The conditional transfer order was stayed by the MDL court for seven days following its entrance. Within one business day of the transfer of *Dempsey* being finalized, Student Plaintiffs intend to move for leave to file an Amended Student Housing Consolidated Complaint ("ASC").

Defendants have indicated that they do not take a position on Plaintiffs' intended motion for leave to file an ASC. Plaintiffs will outline the parties' respective positions as to the briefing schedule for any motion to dismiss in their motion papers.

- Service of Process

Plaintiffs are endeavoring to confirm the service of process in each of the Member Cases, as well as the two amended complaints. The parties intend to confer further about any remaining service issues before the August 7 hearing.

Dated: July 31, 2023

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I hereby certify that on July 31, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

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Tricia R. Herzfeld